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TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

August 28, 2000

Ann Goode, Director
US Environmental Protection Agency
Office of Civil Rights (1201A)
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Comments on June 27, 2000 Draft Revised Guidance for Investigating Title VI Complaints
Challenging Permits

Dear Ms. Goode:

I am pleased to provide the following comments on the referenced Draft Guidance, and look forward to working with you and your staff to craft acceptable approaches to addressing the issue of Title VI compliance.

The first concern with the Draft Guidance is with the issue of the scope of EPA's review. At several points in the Guidance, EPA states that it will limit its inquiry to matters "within the recipient's authority to consider." 65 Fed. Reg. 39671, 39678. By contrast, the Guidance also states that "A recipient's Title VI obligation exists in addition to the Federal or state environmental laws governing its environmental permitting program." Id. at 39680. The inconsistency of these statements could lead to contradictory and confusing interpretations by EPA staff. EPA should clarify this issue, and should limit its inquiries to matters within the recipient's authority.

The Guidance contains an apparent inconsistency regarding the timing of the recipient's "written submission responding to, rebutting, or denying" the allegations set forth in a complaint filed with EPA. The Guidance places the time for this response immediately following EPA's receipt and acknowledgment of a complaint. Id. at 39670. The rules governing processing of Title VI complaints at 40 CFR §7.120(d)(1)(ii) clearly place this response after EPA accepts all or part of the complaint for processing. The Title VI Complaint Process Flowchart, found at 65 Fed. Reg. 39687, also places the recipient's response after EPA's acceptance of a complaint (citing 40 CFR §7.115 as its basis). Requiring recipients to respond after the mere receipt of a complaint by EPA may result in wasteful use of resources, as recipients could be required to respond to untimely, moot, or unsubstantiated claims of violation. The timing mandated by EPA's rules is more logical and will result in better use of limited public resources. If EPA desires to change the timing of the recipient's response, it must do so through a rule promulgation under the Administrative Procedures Act.

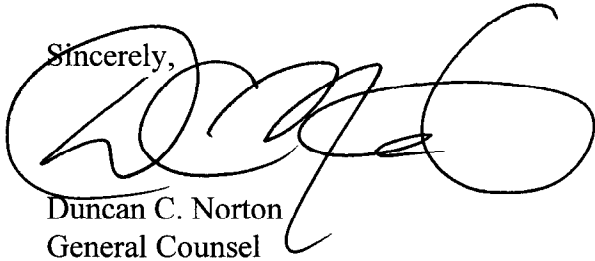
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The Guidance fails to give sufficient detail on the selection of a "comparison population" for assessing disparate impact. Although a fairly detailed description is provided for characterizing the "affected population", EPA spends only a few sentences on comparison populations, an equally if not more important step in evaluating disparate impact. Id. at 39681.

Finally, TNRCC concurs with the Guidance where it states that "Neither the filing of a Title VI complaint nor the acceptance of one for investigation by OCR stays the permit at issue." This statement lends certainty and predictability to the permitting processes of the recipients and EPA, and clarifies this issue for permit holders. EPA could further clarify this issue by stating its opinion regarding the effect of a preliminary finding of noncompliance on an issued permit.

We appreciate the opportunity to comment on these Draft Guidance documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Norton', is written over the word 'Sincerely,' and extends below the name 'Duncan C. Norton'.

Duncan C. Norton
General Counsel